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9 **UNITED STATES DISTRICT COURT
10 DISTRICT OF NEVADA**

11 JOSHUA E. LEMMENS,)
12 Plaintiff,) Case No.: 2:20-cv-00881-BNW
13 v.)
14 ANDREW SAUL,) UNOPPOSED MOTION FOR EXTENSION
15 Commissioner of Social Security,) OF TIME (SECOND REQUEST)
16 Defendant.)
17

18 DEFENDANT'S MOTION FOR EXTENSION OF TIME TO FILE THE ELECTRONIC
19 CERTIFIED ADMINISTRATIVE RECORD AND ANSWER TO PLAINTIFF'S COMPLAINT

20 Defendant, Andrew Saul, Commissioner of Social Security (the "Commissioner"), by and
21 through his undersigned attorneys hereby moves for a 62-day extension of time to file Defendant's
22 Electronic Certified Administrative Record and Answer to Plaintiff's Complaint. Defendant's
23 Electronic Certified Administrative Record and Answer to Plaintiff's Complaint are due to be filed
24 by February 8, 2021.
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1 Defendant makes this request in good faith and for good cause, because the CAR, which
2 must be filed with the Answer and is necessary to adjudicate the case, is not yet available. The
3 public health emergency pandemic caused by COVID-19 has significantly impacted operations in
4 the Social Security Administration's Office of Appellate Operations (OAO) in Falls Church,
5 Virginia, which is responsible for producing the CAR that must be filed with the Answer, per 42
6 U.S.C. §§ 405(g) and (h). Prior to the COVID-19 pandemic, to safeguard Personally Identifiable
7 Information (PII), all hearing recordings, which are part of the administrative record, were
8 downloaded onto compact discs and encrypted. OAO securely routed the encrypted discs to a
9 private contractor through a daily pickup and delivery service at the Official Duty Station (ODS) in
10 Falls Church, Virginia. The private contractor would transcribe the hearing recording and send the
11 paper copy of the hearing transcript back to OAO. OAO personnel would then scan the hearing
12 transcript into the electronic record or place the hearing transcript in the paper case file. Thereafter,
13 OAO personnel would assemble the administrative record in a prescribed order. After the advent of
14 COVID-19, the Agency has taken a number of concrete steps to transition its years-old in person
15 CAR preparation process to a fully virtual one.

16 OAO has been actively pursuing mitigation efforts to allow the remote preparation of
17 administrative records to ensure a continuity of operations. For cases in which the private
18 contractors were already in possession of hearing recordings for transcription, with the assistance of
19 the Office of Acquisitions and Grants (OAG), OAO received approval to receive these transcripts
20 from the private contractors via secured email, e.g., using password protection and redacted Social
21 Security Numbers. In April 2020, OAO began receiving such hearing transcripts from private
22 contractors via secured email.

23 For cases in which OAO had not yet submitted recordings to the private contractors before
24 March 16, 2020, OAO has been pursuing all available options to obtain transcriptions for these
25 cases. In May 2020, OAO began encrypting hearing recordings and securely emailing them to the
26 contractors for transcription. Through the month of May, OAO and the contractors worked to
resolve technical issues that arose, particularly with large files.

1 As detailed in the attached declaration from Jebby Rasputnis, Executive Director of the
2 OAO, the Commissioner has redesigned its business process to allow for virtual CAR production,
3 including adopting new technology, retraining staff, modifying blanket purchase agreements with
4 transcription services, and adding two more transcription vendors. In addition to the changes made
5 by the Commissioner, the agency's transcription vendors are also modifying their business
6 operations to help provide virtual services. As a result, the agency was able to process 1,372 cases
7 in September, 2,115 cases in October, and 1,709 cases in November. OAO must still navigate and
8 overcome significant challenges: (1) a backlog of nearly 10,200 cases, (2) challenges in prioritizing
9 older cases using the new process, and (3) the capacity of the contracted transcription services.

10 OAO is trying to prioritize CAR preparation based on objective factors, such as filing date,
11 and is working diligently to address the backlog of CARS. Out of fairness to all social security
12 claimants, Defendant respectfully requests that the Court defer to OAO's prioritization of cases for
13 CAR preparation and maintain consistency in the length of extensions granted in social security
14 cases, absent a showing of exceptional circumstances. Counsel for Defendant further states that the
15 Office of General Counsel (OGC) is monitoring receipt of transcripts on a daily basis and is
16 committed to filing Answers promptly upon receipt and review of the administrative records.

17 Given the volume of pending cases, Defendant requests an extension in which to respond to
18 the Complaint until April 9, 2021. If Defendant is unable to produce the certified administrative
19 record necessary to file an Answer in accordance with this Order, Defendant shall request an
20 additional extension prior to the due date.

21 The undersigned affirms that opposing counsel does not object to the requested extension.

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1 WHEREFORE, the Defendant asks the Court to enlarge the time for filing the Electronic
2 Certified Administrative Record and Answer to Plaintiff's Complaint until April 9, 2021.

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4 Dated: February 3, 2021

5 Respectfully submitted

6 NICHOLAS A. TRUTANICH
7 United States Attorney

8 /s/ Marcelo Illarmo
9 MARCELO ILLARMO
10 Special Assistant United States Attorney

11 IT IS SO ORDERED:

12 
13 UNITED STATES MAGISTRATE JUDGE
14 DATED: 2/8/2021